

1           496. The Texas Plaintiff and the Class relied on Defendants' false statements  
2 and omissions to their detriment.

3           497. Defendants further acted unconscionably by committing acts or practices  
4 to the Texas Plaintiff's and the Class members' detriments and took advantage of the  
5 Texas Plaintiff's and the Class members' lack of knowledge, ability, experience, or  
6 capacity to a grossly unfair degree.

7           498. Defendants' violations of the DTPCA were committed knowingly and  
8 intentionally

9           499. The Texas Plaintiffs have provided written notice to Defendants of the  
10 filing of this Complaint pursuant to Tex. Bus. & Com. Code Ann. §17.505.

11           500. The Texas Plaintiffs shall send a copy of this Complaint and written  
12 notice to the Consumer Protection Division pursuant to Tex. Bus. & Com. Code Ann.  
13 §17.501.

14           501. The DPTCA Notice advised Defendants in great detail of the claims  
15 arising under §17.501(a), including that Defendants were engaging in the following  
16 deceptive and false advertising practices:

17                   (a) They falsely advertise the fuel economy of the Vehicles as best in  
18 class and beating rival Prius v.

19                   (b) Their advertisements refer to the Vehicles as "the 47 combined  
20 mpg C-MAX Hybrid" and/or state that the Vehicles "get," "achieve," or "offer" 47  
21 mpg; however, this is untrue, and drivers do not achieve anything nearing this level of  
22 fuel efficiency in real-world driving.

23                   (c) Insofar as they purport to be advertising the EPA  
24 MPG/MPGe/FE estimates, they do so while failing to disclose that the ratings are, in  
25 fact, based on testing purportedly performed under EPA standards and that they are  
26 estimates. Furthermore, Defendants' advertisements do not comply with FTC  
27 regulations governing advertising of fuel economy as set forth in 16 C.F.R. §259.2(a).

28

1 (d) They fail to provide the disclaimer that the advertised rates will  
 2 vary with actual MPG ratings achieved in the real world, consistent with the  
 3 requirements of 40 C.F.R. §600.302-08(b)(4).

4 (e) They provide additional affirmative misrepresentations that  
 5 indicate that consumers should expect the Vehicles to achieve the advertised MPG  
 6 ratings in normal, real-world use.

7 502. The DPTCA Notice also included the amount of economic damages and  
 8 the amount of expenses and attorneys' fees reasonably incurred in asserting the claims  
 9 against Defendants.

10 **TWENTY-SEVENTH CAUSE OF ACTION**  
 11 **(Violation of the Virginia Consumer Protection Act,**  
**Va. Code Ann. §59.1-196 *et seq.*)**  
 12 **on Behalf of the Virginia Plaintiffs**

13 503. The Virginia Plaintiffs and the Class hereby incorporate by reference the  
 14 previous allegations as if fully set forth herein.

15 504. Defendants are persons as defined by Va. Code Ann. §59.1-198.

16 505. As set forth above, Defendants concealed and/or suppressed material  
 17 facts concerning the Vehicles' fuel economy, which it had a duty to disclose.

18 506. As alleged above, Defendants made numerous material statements about  
 19 the Vehicles' fuel economy that were either false or misleading. In addition,  
 20 Defendants omitted material facts regarding the Vehicles' true fuel economy. By  
 21 misrepresenting the Vehicles' fuel economy and failing to disclose and actively  
 22 concealing the Vehicles' true fuel economy, Defendants engaged in unfair or  
 23 deceptive practices prohibited by Va. Code Ann. §59.1-200, including:

24 (a) misrepresenting that the Vehicles have certain quantities,  
 25 characteristics, ingredients, uses, or benefits;

26 (b) misrepresenting that the Vehicles are of a particular standard,  
 27 quality, grade, style, or model; and  
 28

1 (c) using any other deception, fraud, false pretense, false promise, or  
2 misrepresentation in connection with a consumer transaction.

3 507. Defendants nevertheless failed to inform the Virginia Plaintiffs and the  
4 Class members about the Vehicles' true fuel economy.

5 508. Each of these statements contributed to the deceptive context of  
6 Defendants' unlawful advertising and representations as a whole.

7 509. Defendants owed the Virginia Plaintiffs and the Class members a duty to  
8 disclose the Vehicles' true nature because they possessed exclusive knowledge of the  
9 facts rendering Defendants representations regarding the Vehicles' fuel economy false  
10 and misleading.

11 510. Defendants intentionally concealed the Vehicles' true fuel economy  
12 through their deceptive marketing campaign and/or made incomplete representations  
13 about the Vehicles' fuel economy generally, while purposefully withholding material  
14 facts from the Virginia Plaintiffs and the Class members that contradicted these  
15 representations.

16 511. Defendants possessed exclusive knowledge of the facts described herein,  
17 which render Defendants' representations regarding the Vehicles' fuel economy false  
18 and misleading.

19 512. Defendants' concealment and/or suppression of these material facts were  
20 made intentionally and knowingly.

21 513. Defendants actively and willfully concealed and/or suppressed these  
22 material facts, in whole or in part, with the intent to deceive and mislead the Virginia  
23 Plaintiffs and the Class members and to induce the Virginia Plaintiffs and the Class  
24 members to purchase and/or lease the Vehicles at all or for a higher price, which did  
25 not match the Vehicles' true value.

26 514. The Virginia Plaintiffs and Class members were unaware of these  
27 omitted material facts and would not have acted as they did if they had known of the  
28 concealed and/or suppressed facts.

1        515. The Virginia Plaintiffs' and Class members' actions were justified.  
 2 Defendant was in exclusive control of the material facts related to the  
 3 misrepresentations described herein and such facts were not known to the public or to  
 4 Plaintiffs and the other Class members.

5        516. Defendants' unfair and deceptive trade practices did deceive the Virginia  
 6 Plaintiffs and the Class members and, as a result of the concealment and/or  
 7 suppression of the facts, the Virginia Plaintiffs and the Class members sustained  
 8 damage in an amount to be determined at trial.

9        517. The Virginia Plaintiffs and the Class members also seek actual damages,  
 10 which may be trebled because Defendants' violations were willful, and reasonable  
 11 attorneys' fees and court costs.

12                    **TWENTY-EIGHTH CAUSE OF ACTION**  
 13                    **(Violations of Washington Revised Code §19.86.010, *et seq.*,**  
 14                    **the Washington Consumer Protection Act)**  
                      **on Behalf of the Washington Plaintiffs**

15        518. The Washington Plaintiffs and the Class hereby incorporate by reference  
 16 the previous allegations as if fully set forth herein.

17        519. Defendants are a "person" within the meaning of the Washington  
 18 Consumer Protection Act ("WCPA"), WRC §19.86.010(1), and conducts "trade" and  
 19 "commerce" within the meaning of the WCPA, WRC §19.86.010(2).

20        520. The Washington Plaintiffs and members of the Class are "persons"  
 21 within the meaning of the WPCA, WRC §19.86.010(1).

22        521. Defendants' actions are unfair and/or deceptive within the meaning of the  
 23 WCPA in that they falsely advertised the Vehicles' fuel efficiency, as described  
 24 throughout this Complaint. Such false advertisements were material to the  
 25 Washington Plaintiffs and Class members in purchasing and/or leasing the Vehicles.

26        522. Defendants' unfair or deceptive acts or practices have occurred in their  
 27 trade or business, and Defendants were and are capable of deceiving a substantial  
 28 portion of the public. The Washington Plaintiffs and the Class members relied on the

1 false advertisements and were, thereby, induced into purchasing and/or leasing  
2 Defendants' Vehicles and paying a higher price for the Vehicles.

3 523. Defendants' general course of conduct has an impact on the public  
4 interest, and the acts complained of herein are ongoing and/or have a substantial  
5 likelihood of being repeated.

6 524. As a direct and proximate result of Defendants' actions described above,  
7 the Washington Plaintiffs and the Class members have been injured in fact and  
8 suffered damages, and seek relief in the form of actual damages, treble damages, and  
9 reasonable attorneys' fees, pursuant to WRC §19.86.090.

10 **TWENTY-NINTH CAUSE OF ACTION**  
11 **(Violation of the Wisconsin Deceptive Trade Practices Act,**  
12 **Wisc. Stat. §110.18)**  
13 **on Behalf of the Wisconsin Plaintiffs**

14 525. The Wisconsin Plaintiffs and the Class hereby incorporate by reference  
15 the previous allegations as if fully set forth herein.

16 526. Defendants' above-described acts and omissions constitute false,  
17 misleading, or deceptive acts or practices under the Wisconsin Deceptive Trade  
18 Practices Act ("DTPA"), §110.18.

19 527. By failing to disclose and misrepresenting the fuel economy of the  
20 Vehicles, Defendants engaged in deceptive business practices prohibited by the  
21 DTPA, including:

22 (a) representing that the Vehicles have characteristics, uses, benefits,  
23 and qualities which they do not have;

24 (b) representing that the Vehicles are of a particular standard, quality,  
25 and grade when they are not;

26 (c) advertising the Vehicles with the intent not to sell them as  
27 advertised;

28 (d) representing that a transaction involving the Vehicles confers or  
involves rights, remedies, and obligations which it does not; and

1 (e) representing that the subject of a transaction involving the Vehicles  
 2 has been supplied in accordance with a previous representation when it has not. As  
 3 alleged above, Defendants made numerous material statements about the Vehicles'  
 4 fuel economy that were either false or misleading.

5 528. Each of these statements contributed to the deceptive context of  
 6 Defendants' unlawful advertising and representations as a whole.

7 529. Defendants' unfair or deceptive acts or practices were likely to and did in  
 8 fact deceive reasonable consumers, including Wisconsin Plaintiffs and members of the  
 9 Class, about the Vehicles' fuel economy.

10 530. In purchasing and/or leasing their Vehicles, Wisconsin Plaintiffs and the  
 11 Class members relied on Defendants' misrepresentations and/or omissions with  
 12 respect to the Vehicles' fuel economy. Defendants' representations turned out not to  
 13 be true because the Vehicles do not achieve the represented fuel economy.

14 531. Had the Wisconsin Plaintiffs and the Class members known this, they  
 15 would not have purchased and/or leased their Vehicles and/or paid as much for them.

16 **THIRTIETH CAUSE OF ACTION**  
 17 **(Fraud)**  
 18 **on Behalf of All Plaintiffs**

19 532. Plaintiffs incorporate the above allegations by reference as if fully set  
 20 forth herein.

21 533. Defendants' misrepresentations, nondisclosure, and/or concealment of  
 22 material facts to Plaintiffs and the members of the Class, as set forth above, were  
 23 known or through reasonable care should have been known by Defendants to be false  
 24 and material and were intended by Defendants to mislead Plaintiffs and the Class.

25 534. Further, Defendants' representations were made with the intent that the  
 26 general public, including Plaintiffs and Class members, rely upon them. Defendants'  
 27 representations were made with knowledge of the falsity of such statements or in  
 28 reckless disregard of the truth thereof. If Plaintiffs and the Class had been aware of  
 these suppressed facts, Plaintiffs and the Class would not have purchased and/or

1 leased their Vehicles at the price sold and/or leased by Defendants. In reliance upon  
2 these misrepresentations, Plaintiffs and members of the Class purchased their  
3 Vehicles.

4 535. Upon information and belief, Plaintiffs and the Class allege that  
5 Defendants misrepresented material facts with the intent to defraud Plaintiffs and the  
6 Class. The information withheld from Plaintiffs and Class members is material and  
7 would have been considered by a reasonable person, as detailed herein.

8 536. Plaintiffs and the Class were actually misled and deceived and were  
9 induced by Defendants to purchase the Vehicles which they would not otherwise have  
10 purchased.

11 537. As a result of Defendants' conduct, Plaintiffs and Class members have  
12 been damaged. In addition to such damages, Plaintiffs seek punitive or exemplary  
13 damages pursuant to California Civil Code §3294 in that Defendants engaged in "an  
14 intentional misrepresentation, deceit, or concealment of a material fact known to the  
15 defendant with the intention on the part of the defendant of thereby depriving a person  
16 of property or legal rights or otherwise causing injury."

17 **THIRTY-FIRST CAUSE OF ACTION**  
18 **(Negligent Misrepresentation)**  
19 **on Behalf of All Plaintiffs**

20 538. Plaintiffs incorporate the above allegations by reference as if fully set  
21 forth herein.

22 539. Defendants had a duty to provide honest and accurate information to its  
23 customers so that customers could make informed decisions on the substantial  
24 purchase of automobiles.

25 540. The information withheld from Plaintiffs and Class members is material  
26 and would have been considered by a reasonable person, as are the misrepresentations  
27 regarding the Vehicles, as detailed herein.

28 541. Defendants specifically and expressly misrepresented material facts to  
Plaintiffs and Class members, as discussed above.



1           542. Defendants knew or in the exercise of reasonable diligence should have  
2 known that the ordinary consumer would be misled by Defendants' misleading and  
3 deceptive advertisements.

4           543. Plaintiffs and Class members justifiably relied on Defendants'  
5 misrepresentations and have been damaged thereby.

6                           **THIRTY-SECOND CAUSE OF ACTION**  
7                           **(Breach of Contract)**  
8                           **on Behalf of All Plaintiffs**

9           544. Plaintiffs incorporate the above allegations by reference as if fully set  
10 forth herein.

11           545. Through their websites, television advertisements, marketing materials,  
12 and vehicle window stickers, as more fully set forth herein, Defendants conveyed  
13 uniform representations and offers regarding the quality and performance of the  
14 Vehicles, including that they achieved the represented fuel economy. Plaintiffs and  
15 members of the Class accepted Defendants' offers and paid to purchase or lease the  
16 Vehicles based on those offers.

17           546. Defendants breached the contracts by delivering products that do not  
18 perform as offered and promised. Specifically, the Vehicles do not achieve the  
19 represented fuel economy.

20           547. As a direct and proximate cause of Defendants' breach, Plaintiffs and  
21 Class members were damaged through the purchase price, higher fuel costs, and  
22 diminution in the resale value in an amount that will be proven.

23                           **THIRTY-THIRD CAUSE OF ACTION**  
24                           **(Breach of Covenant of Good Faith and Fair Dealing)**  
25                           **on Behalf of All Plaintiffs**

26           548. Plaintiffs incorporate the above allegations by reference as if fully set  
27 forth herein.

28           549. The law implies a covenant of good faith and fair dealing in every  
contract.



1           550. Defendants violated the covenant of good faith and fair dealing in their  
2 contracts with Plaintiffs and members of the Class by, *inter alia*, misrepresenting to  
3 Plaintiffs and the Class the quality and performance of the Vehicles, including that  
4 they achieved the represented fuel economy. Plaintiffs and members of the Class  
5 accepted Defendants' offers and paid to purchase or lease the Vehicles based on those  
6 offers.

7           551. Plaintiffs and the Class members performed all or substantially all of the  
8 significant duties required under their agreements with Defendants.

9           552. The conditions required for Defendants' performance under the contracts  
10 had occurred.

11           553. Defendants did not provide and/or unfairly interfered with the right of  
12 Plaintiffs and Class members to receive the full benefits under the agreement due to  
13 their misrepresentations.

14           554. Plaintiffs and Class members were damaged by Defendants' breach  
15 through the purchase price, higher fuel costs, and diminution in the resale value in an  
16 amount that will be proven.

17                           **THIRTY-FOURTH CAUSE OF ACTION**  
18                           **(Breach of Express Warranty)**  
                              **on Behalf of All Plaintiffs**

19           555. Plaintiffs incorporate the above allegations by reference as if fully set  
20 forth herein.

21           556. Uniform Commercial Code §2-313 provides that an affirmation of fact or  
22 promise made by the seller to the buyer which relates to the goods and becomes part  
23 of the basis of the bargain creates an express warranty that the goods shall conform to  
24 the promise.

25           557. Plaintiffs and Class members formed contracts with Defendants at the  
26 time Plaintiffs and Class members purchased or leased their Vehicles. The terms of  
27 the contracts include the promises and affirmations of fact and express warranties  
28 made by Defendants about the Vehicles' fuel economy through their marketing and

1 advertising campaigns, on Ford's website and at the dealership, including the window  
2 stickers affixed to the Vehicles.

3 558. Defendants' marketing and advertising constitute express warranties,  
4 which served as part of the basis of the bargain, and are part of a standardized contract  
5 between Plaintiffs and the other members of the Class, on the one hand, and  
6 Defendants on the other.

7 559. Plaintiffs and Class members were exposed to these statements and  
8 reasonably relied upon such promises and affirmations of fact contained in  
9 Defendants' marketing campaign.

10 560. These warranties were not true, as Defendants' Vehicles did not provide  
11 the promised fuel efficiency, as described herein.

12 561. Defendants breached the terms of these contracts, including the express  
13 warranties, by not providing the products as advertised, as described herein.

14 562. At all times, California as well as the 47 states listed below, and the  
15 District of Columbia, have codified and adopted the provisions of the Uniform  
16 Commercial Code governing the express warranty of merchantability: Ala. Code §7-  
17 2-313; Alaska Stat. §45.02.313; Ariz. Rev. Stat. §47-2313; Ark. Code Ann. §4-2-313;  
18 Cal. Com. Code §2313; Colo. Rev. Stat. §4-2-313; Conn. Gen. Stat. §42a-2-313; Del.  
19 Code Ann. tit. 6, §2-313; D.C. Code §28:2-313; Fla. Stat. §672.313; Ga. Code Ann.  
20 §11-2-313; Haw. Rev. Stat. Ann. §490:2-313; Idaho Code Ann. §28-2-313; §810 Ill.  
21 Comp. Stat. Ann. 5/2-313; Ind. Code Ann. §26-1-2-313; Iowa Code §554.2313; Kan.  
22 Stat. Ann. §84-2-313; Ky. Rev. Stat. Ann. §355.2-313; Me. Rev. Stat. tit. 11, §2-313;  
23 Md. Code Ann., Com. Law §2-313; Mass. Gen. Laws. ch. 106, §2-313; Mich. Comp.  
24 Laws §440.2313; Minn. Stat. §336.2-313; Miss. Code Ann. §75-2-313; Mo. Rev. Stat.  
25 §400.2-313; Mont. Code Ann. §30-2-313; Nev. Rev. Stat. §104.2313; N.H. Rev. Stat.  
26 Ann. §382-A:2-313; N.J. Stat. Ann. §12A:2-313; N.M. Stat. Ann. §55-2-313; N.Y.  
27 U.C.C. Law §2-313; N.C. Gen. Stat. §25-2-313; N.D. Cent. Code §41-02-30; Ohio  
28 Rev. Code Ann. §1302.26; Okla. Stat. tit. 12A, §2-313; Or. Rev. Stat. §72.3130; 13

1 Pa. Cons. Stat. §2313; R.I. Gen. Laws §6A-2-313; S.C. Code Ann. §36-2-313; S.D.  
 2 Codified Laws §57A-2-313; Tenn. Code Ann. §47-2-313; Tex. Bus. & Com. Code  
 3 Ann. §2.313; Utah Code Ann. §70A-2-313; Vt. Stat. Ann. tit.9A, §2-313; Va. Code  
 4 Ann. §8.2-313; Wash. Rev. Code Ann. §62A.2-313; W. Va. Code Ann. §46-2-313;  
 5 Wis. Stat. §402.313; and Wyo. Stat. Ann. §34.1-2-313.

6 563. As a result of Defendants' breaches of their contracts and express  
 7 warranties, Plaintiffs and the Class have been damaged in the amount of the purchase  
 8 price of Defendants' products, the diminution of value of their Vehicles, and the  
 9 increased costs of fuel.

10 564. All conditions precedent to Defendants' liability under this express  
 11 contract, including notice, have been performed by Plaintiffs and the Class as  
 12 described above.

13 **THIRTY-FIFTH CAUSE OF ACTION**  
 14 **(Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*)**  
**on Behalf of All Plaintiffs**

15 565. Plaintiffs incorporate the above allegations by reference as if fully set  
 16 forth herein.

17 566. Plaintiffs and Class members are "consumers" within the meaning of the  
 18 Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.* ("MMWA").

19 567. Defendants are "suppliers" and "warrantors" within the meaning of the  
 20 MMWA.

21 568. The Vehicles are a "consumer product" within the meaning of the  
 22 MMWA.

23 569. Defendants' written affirmations of fact, promises, and/or descriptions as  
 24 alleged herein are each a "written warranty" as to the Vehicles' fuel economy and/or  
 25 there exists an implied warranty for the sale of such product within the meaning of the  
 26 MMWA.

27 570. For the reasons detailed above, Defendants breached these express and  
 28 implied warranties, as the Vehicles do not perform as Defendants represented or were

1 not fit for their intended use. Defendants have refused to remedy such breaches, and  
2 their conduct caused damages to Plaintiffs and members of the Class.

3 571. The amount in controversy meets or exceeds the sum or value of \$50,000  
4 (exclusive of interest and costs) computed on the basis of all claims to be determined  
5 in this suit.

6 572. Resorting to any informal dispute settlement procedure and/or affording  
7 Defendants another opportunity to cure these breaches of warranties is unnecessary  
8 and/or futile. Any remedies available through any informal dispute settlement  
9 procedure would be inadequate under the circumstances, as Defendants have failed to  
10 remedy the problems associated with the Vehicles, and, as such, have indicated they  
11 have no desire to participate in such a process at this time. Any requirement under the  
12 MMWA or otherwise that Plaintiffs resort to any informal dispute settlement  
13 procedure and/or afford Defendants a reasonable opportunity to cure the breach of  
14 warranties described above is excused and/or has been satisfied.

15 573. As a result of Defendants' breaches of warranty, Plaintiffs and Class  
16 members have sustained damages and other losses in an amount to be determined at  
17 trial. Plaintiffs and Class members are entitled to recover damages, specific  
18 performance, costs, attorneys' fees, rescission, and/or other relief as is deemed  
19 appropriate.

20 **THIRTY- SIXTH CAUSE OF ACTION**  
21 **(Unjust Enrichment)**  
**on Behalf of All Plaintiffs**

22 574. Plaintiffs incorporate the allegations in paragraphs 1 through 219 as if  
23 fully set forth herein.

24 575. Defendants have benefited and been enriched by the conduct alleged  
25 herein. Defendants have generated millions of dollars of revenue from the unlawful  
26 conduct described above. Defendants have knowledge of this benefit.

27 576. Defendants have voluntarily accepted and retained this benefit.  
28



1 C. For damages under the causes of action for fraud, negligent  
2 misrepresentation, statutory deceit, violation of the Consumer Legal Remedies Act,  
3 breach of contract, and breach of express and implied warranties;

4 D. For punitive damages, pursuant to California Civil Code §§3294 and  
5 1780(a)(4);

6 E. For reasonable attorneys' fees and costs, pursuant to California Code of  
7 Civil Procedure §1021.5, California Civil Code §1780(d), and other statutes as may be  
8 applicable;

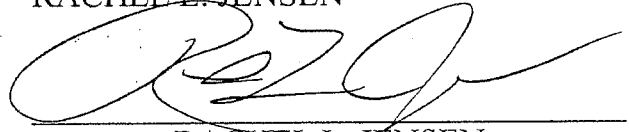
9 F. For prejudgment interest to the extent allowed by law;

10 G. For costs of suit incurred herein;

11 H. For such other and further relief as the Court deems appropriate.

12 DATED: April 15, 2013

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RACHEL L. JENSEN

  
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Co-Lead Counsel for Plaintiffs and the  
Class



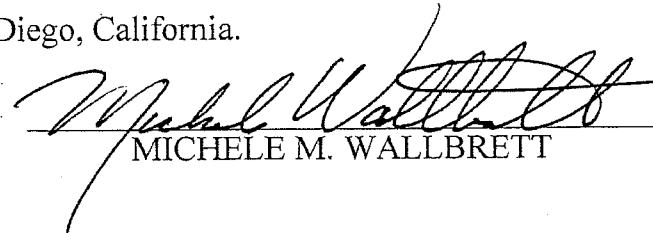
DECLARATION OF SERVICE

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on April 15, 2013, declarant served the CONSOLIDATED AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL by email to the party listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on April 15, 2013, at San Diego, California.

  
MICHELE M. WALLBRETT

## **Mailing Information for a Case 8:12-cv-02232-DOC-JPR**

### **Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

- **Rachel L Jensen**  
rjensen@rgrdlaw.com, e\_file\_sd@rgrdlaw.com

### **Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)